LAW ENFORCEMENT AND HUMAN RIGHTS DURING PUBLIC HEALTH EMERGENCIES: STUDY OF COVID-19 IN INDIA

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INTRODUCTION

The Novel Corona virus, Covid-19 is caused by the severe acute respiratory syndrome coronavirus-2 (SARS-CoV-2). It has been declared a pandemic by the World Health Organization and is an unprecedented worldwide health crisis.

On March 11, 2020, the World Health Organization (WHO) declared that an outbreak of the viral disease COVID-19 – first identified in December 2019 in Wuhan, China – had reached the level of a global pandemic. The extent of the ramifications caused is still unclear, but it is evident that the world has come to a standstill. Quarantine and travel bans have been imposed globally. India too has people to legally enforceable quarantine or self-quarantine. It is in this context that mitigation and control of the outbreak of COVID-19 in India are thus of paramount importance not only to India but to the world.

Historically, India has adopted the common law remedies for quarantine enforcement, which has proved to be effective in times of epidemics and pandemics. One of the earliest precedents is found by the en banc decision of United States Supreme Court. Wherein the powers of the state to enact quarantine laws and impose health regulations are justified in cases of health emergencies, dangerous diseases, and viral infections.

HUMAN RIGHTS DIMENSIONS OF COVID-19 RESPONSE

COVID 19 is a test of societies, of governments, of communities and of individuals. Now is the time for solidarity and cooperation to tackle the virus, and to mitigate the effects, often unintended, of measures designed to halt the spread of the virus. Respect for human rights

across the spectrum, including economic and social rights, and civil and political rights, will be fundamental to the success of the public health response.

Human rights law guarantees everyone the right to the highest attainable standard of health and obligates governments to take steps to prevent threats to public health and to provide medical care to those who need it. Human rights law also recognizes that in the context of serious public health threats and public emergencies restrictions on some rights can be justified when they have a legal basis, are strictly necessary, based on scientific evidence and neither arbitrary nor discriminatory in application, of limited duration, respectful of human dignity, subject to review, and proportionate to achieve the objective.

The scale and severity of the COVID-19 pandemic clearly rises to the level of a public health threat that could justify restrictions on certain rights, such as those that result from the imposition of quarantine or isolation limiting freedom of movement. At the same time, careful attention to human rights such as non-discrimination and human rights principles such as transparency and respect for human dignity can foster an effective response amidst the turmoil and disruption that inevitably results in times of crisis and limit the harms that can come from the imposition of overly broad measures that do not meet the above criteria. This document provides an overview of human rights concerns posed by the corona virus outbreak, drawing on examples of government responses to date, and recommends ways governments and other actors can respect human rights in their response.

The 123-year-old colonial law, however, does not even define what a disease is, let alone an epidemic or a pandemic. Indeed, a Public Health (Prevention, Control and Management of Epidemics, Bio-Terrorism and Disasters) Bill had been drafted in 2017, intended to replace the Epidemic Diseases Act of 1897.
The Bill has yet to be tabled in Parliament. This brief calls for the creation of a sound legal architecture to deal more effectively with outbreaks of infectious diseases, especially pandemics of the scale of COVID-19.

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Access to health care

- Health strategies should address not only the medical dimensions of the pandemic but also the human rights and gender-specific consequences of measures taken as part of the health response.
- Treatment should be available to everyone without discrimination, including the most vulnerable and marginalized. This means ensuring that no one is denied timely and appropriate treatment because they lack the means to pay for it, their age, or because stigma prevents them from getting treatment

Emergency measures

- Governments have to take difficult decisions in response to COVID-19. International law allows emergency measures in response to significant threats – but measures should be proportionate to the evaluated risk, necessary and applied in a non-discriminatory way. This means having a specific focus and duration, and taking the least intrusive approach possible to protect public health.
- When states of emergency are declared, states should meet their legal obligation to provide formal notification through the UN Secretary-General, where applicable.
- With regard to COVID-19, emergency powers must be used for legitimate public health goals, not used as basis to quash dissent, or silence the work of human rights defenders or journalists, or take any other steps that are not necessary to address the health situation. Some rights are non-derogable, including the principle of non-refoulement, the prohibition of collective expulsion, the prohibition of torture and ill-treatment, the use of arbitrary detention, and others.
- Governments should inform the affected population of what the state of emergency means, where it applies and for how long it is intended to remain in effect, and should update this information regularly.
- As the crisis passes, it will be important for Governments to ensure a return to life as normal and not use emergency powers to indefinitely regulate day-to-day life, recognizing that the response must match the needs of different phases of this crisis.

Leaving no one behind

- All societies include people who are marginalized and face difficulties accessing public information and services for a variety of reasons, some of them reflecting entrenched discrimination or political divides. COVID-19 information and response efforts will need to take particular care to identify people who may be at risk of being missed or excluded, such as national, ethnic or religious minorities, indigenous peoples, migrants, displaced persons, and refugees, older persons, persons with disabilities, LGBTI people or people affected by extreme poverty.
- National Human Rights Institutions and civil society can assist in identifying people who may otherwise be missed or excluded, supporting the flow of information to these communities, and providing feed-back to authorities on the impact of measures on communities.

Housing

- As people are being called upon to stay at home, it is vital that Governments take urgent measures to help people without adequate housing. COVID-19 measures for staying at home and practicing social distancing should reflect that this is extremely hard for some – for example people living in overcrowded conditions, homeless people, and those lacking access to water and sanitation.
- Good practices for addressing people living in inadequate housing and the homeless include providing emergency housing (including using vacant and abandoned housing units, available short-term rentals) with services for those who are affected by the virus and must isolate.
- Authorities should take targeted steps to prevent additional people from becoming homeless – for example as people face eviction when loss of income makes it impossible to pay mortgages and rents. Good practices such as moratoriums on evictions, and deferrals of mortgage payments should be broadly replicated.
- When and where containment measures are enforced, no one should be punished because they are homeless or live in inadequate housing.

Persons with disabilities

- Containment measures, such as physical distancing and self-isolation, need to take account of the needs of people who rely on the support of others to eat, dress and bathe.

- Many persons, including persons with disabilities, rely on home and community services. These services should support minimizing risk, and States should put in place additional measures to guarantee the continuity of support for people with disabilities throughout the crisis. Should restrictions on movement impede existing family and social support networks, they should be replaced by other services.
- Access to additional financial aid will also be crucial for people with disabilities and their families as many depend on services that have been suspended, and may lack the resources to stockpile food and medicine or pay for home delivery.

Older persons

- Older persons have the same rights as any other age group, and they should be protected equally during the pandemic. Special attention should be paid to the particular risks faced by older persons, including isolation and neglect resulting from physical distancing and age-based discrimination in access to medical treatment and other support. Protocols on triage should be based on scientific evidence and medical need.

People in detention and institutions

- People deprived of their liberty, including in prisons, pre-trial detention, immigration detention, institutions, compulsory drug rehabilitation centers, and other places of detention are at heightened risk of infection in the case of an outbreak. There is a high risk of contamination and physical distancing is difficult to achieve. Their situation should be specifically addressed in crisis planning and response.
- States should adopt special measures to ensure access to information, preventive and other health care for all persons deprived of their liberty.
- States should urgently explore options for release and alternatives to detention to mitigate the risk of harm within places of detention, including for persons who have committed minor, petty and non-violent offenses, those with imminent release dates, people with underlying health conditions, and those in pre-trial detention. People detained without legal basis should be released, as should people in compulsory drug detention centers or treatment programmes.
- There should be a moratorium on children entering detention, and states should release all children from detention who can be safely released.

- The situation of people with disabilities and older persons living in institutions is particularly grave. Limiting contact with families may be justified as part of emergency health measures but may result in people with disabilities and older persons being further exposed to neglect and abuse.

Information and Participation

- Relevant information on the COVID-19 pandemic and response should reach all people, without exception. This requires making information available in readily understandable formats and languages, including indigenous languages and those of national, ethnic and religious minorities, and adapting information for people with specific needs, including the visually- and hearing-impaired, and reaching those with limited or no ability to read or with no internet access.
- Internet access is essential to ensuring that information reaches those affected by the virus. Governments should end any existing internet disruptions or shutdowns and keep the internet on. States should also work to ensure the broadest possible access to internet service by taking steps to bridge digital divides, including the gender gap.
- People have a right to participate in decision-making that affects their lives. Being open and transparent, and involving those affected in decision-making is key to ensuring people participate in measures designed to protect their own health and that of the wider population.
- Medical professionals and relevant experts must be able to speak freely and share information with each other and the public. Journalists and the media should be able to report on the pandemic, including coverage that is critical of government responses, without fear or censorship. Concerted efforts should be made at the international and national levels to counter false or misleading information that fuels fear and prejudice.
- Incorporating the perspectives, voices and knowledge of women in outbreak preparedness and response is essential, including ensuring their representation and leadership roles in global, regional and national COVID-19 spaces.

Stigmatization, Racism

- The COVID-19 pandemic is generating a wave of stigma, discrimination, racism and xenophobia against certain national and ethnic groups. We need to work together to

push back against this trend, including by referring to this disease as COVID-19, rather than using a geographic reference.

- Political leaders and other influential figures should speak out forcefully against the stigma and racism this crisis has generated and must at all costs avoid fueling the fire of such discrimination. States should act quickly to counter rhetoric that stokes fear, and ensure their responses to COVID-19 do not make certain populations more vulnerable to violence and discrimination.
- The dissemination of accurate, clear and evidence-based information and awareness-raising campaigns are the most effective tools against discrimination and xenophobia, which feed on misinformation and fear. Additional efforts are needed to monitor incidents of discrimination and xenophobia, and responses to any incidents should be swift and well-publicized.

Migrants, Displaced People, and Refugees

- Migrants, internally displaced persons (IDPs) and refugees face particular risks, as they may be confined to camps and settlements, or living in urban areas with overcrowding, poor sanitation and overstretched or inaccessible health services.
- Migrants and refugees often face obstacles in accessing health care, including language and cultural barriers, costs, lack of access to information, discrimination and xenophobia. Migrants in an irregular situation can be unable or unwilling to access health care or provide information on their health status because they fear or risk detention, deportation or penalties as a result of their immigration status.
- States should take specific actions to include migrants, IDPs and refugees in national COVID-19 prevention and response. This should include ensuring equal access to information, testing, and health care for all migrants, IDPs and refugees, regardless of their status, as well as firewalls to separate immigration enforcement activities from the ability of migrants and refugees to access health, food distribution, and other essential services.
- International support is urgently needed to help host countries step up services – for migrants, IDPs, refugees and for local communities – and to include them, in national prevention and response arrangements. Failure to do so will endanger the health of all – and risk heightening hostility and stigma. Specific steps should also be taken to counter hostility and xenophobia directed at migrants, IDPs or refugees.

- It is also vital that any tightening of border controls, travel restrictions or limitations on freedom of movement do not prevent people who may be fleeing from war or persecution, or who may otherwise be entitled to protection under human rights law, from accessing safety and protection.

Social and Economic Impacts

- The right to education needs to be protected in the case of school closures; for example, and where possible, through online learning. Girls may be disproportionately affected, as many already face significant obstacles to go to school, and may now be expected to take on increased care work at home. Limited educational opportunities for those without access to the internet risks deepening inequalities and poverty. Girls and boys may also lose access to nutritious food and other services schools often provide.
- Social protection schemes should pay particular attention to children due to the heightened vulnerabilities they face based on their early stage of physical, intellectual and emotional development. Best practices include cash transfers directed at families with children which have been effective in the protection of children's rights.
- Good practices by governments, the public and private sector, international and national organizations to alleviate both the negative socio-economic effects of this crisis should be shared.
- The occupational health and safety of those working during this crisis, particularly health workers should be assessed and addressed. No one should feel forced to work in conditions that unnecessarily endanger their health because they fear losing a job or a paycheck.
- Fiscal stimulus and social protection packages aimed directly at those least able to cope with the crisis are essential to mitigating the devastating consequences of the pandemic. Immediate economic relief measures such as guaranteed paid sick leave, extended unemployment benefits, food distribution, and universal basic income can help safeguard against the acute effects of the crisis.

Food

- The COVID-19 crisis is exacerbating food insecurity, as limitations on freedom of movement and scarcity of protective gear affect agricultural workers, many of whom are migrants in some contexts. Measures to ensure the mobility and safe working

conditions of agriculture workers should be put in place urgently to secure food production, as should targeted approaches such as financial support and access to credit for small scale farmers, especially women.

- Urgent steps are needed to address food insecurity for the poorest and most marginalized segments of the population. Measures aimed at providing immediate support to satisfy people's dietary needs should be put in place, including through provision of food and nutrition assistance.

Privacy

- Health monitoring includes a range of tools that track and monitor the behavior and movements of individuals. Such surveillance and monitoring should be specifically related to and used for public health-specific aims and should be limited in both duration and scope as required in the particular situation. Robust safeguards should be implemented to ensure any such measures are not misused by Governments or companies to collect confidential private information for purposes not related to the public health crisis.

Gender

- Women and girls are likely to face increase care-giving roles in the home, putting them under additional stress and potentially increasing their risk of infection. Across the globe, women comprise 70% of health workers, including midwives, nurses, pharmacists and community health workers on the frontlines, increasing their risk of exposure and infection. Targeted measures to address the disproportionate impact of the crisis on women and girls are needed.
- In many countries, women face disproportionate risks in the job sector, where many work in the informal sector (e.g. domestic workers, nannies, agriculture or supporting family businesses) and may be the first to lose their jobs or suffer from the consequences of the crisis given that they do not have social security, health insurance, or paid leave. Many women are also dependent on accessibility and affordability of childcare, which is now decreasing, further restricting their ability to work and earn an income.

- Older women are more likely to live in poverty or with low or no pensions which may exacerbate the impact of the virus, and limit their access to goods, food, water, information and health services.
- Restrictive public health measures, including quarantines, are increasing exposure to gender-based violence, particularly intimate-partner violence and domestic violence. Support services and safe shelters for victims of gender-based violence need to be continued as a priority, including effective referrals, and ensuring the availability and accessibility of avenues to safety for victims. Information on hotlines and online services should be included in COVID-19 messaging.
- Sexual and reproductive health services should be seen as a life-saving priority and integral to the response, including access to contraception, maternal and newborn care; treatment of STIs; safe abortion care; and effective referral pathways. Efforts should be made not to divert resources away from essential sexual and reproductive health services, which would impact the rights and lives of women and girls in particular.
- LGBTI people also face heightened risks during this pandemic, and specific measures should be incorporated into response plans to address these impacts. Available data suggests LGBTI people are more likely to work in the informal sector, and also have higher rates of unemployment and poverty, Health services particularly relevant for LGBTI people should continue during this crisis, including, HIV treatment and testing.
- States should address misinformation fueling further stigma and discrimination against LGBT people, including narratives blaming LGBTI people for the pandemic.

Water and Sanitation

- Washing hands with soap and clean water is the first line of defense against COVID-19, but 2.2 billion persons lack access to safe water services. Addressing the needs of vulnerable populations, including those with inadequate access to water, is essential to ensuring success in the global struggle against COVID-19.
- Immediate measures that can help include prohibiting water cuts to those who cannot pay water bills, providing water, soap and sanitizer free of cost for the duration of the crisis to people in poverty and those affected by the upcoming economic hardship.

Indigenous peoples

- States should take into account Indigenous peoples' distinctive concepts of health, including their traditional medicine, consult and consider the free prior and informed consent of indigenous peoples in the development of preventive measures on COVID-19.
- States should put in place measures for control over the entry of any person in indigenous territories, in consultation and cooperation with the indigenous peoples concerned, in particular through their representative institutions.
- For those indigenous peoples living in voluntary isolation or initial contact, States and other parties should consider them to be particularly vulnerable groups. Cordons that prevent outsiders from entering the territories of these peoples should be strictly implemented to avoid any contact.

Minorities

- State should put in place additional measures to address the disproportionate impacts of the COVID-19 health crisis that minorities may suffer, due to the remote areas or regions in which they live, often with limited access to basic goods and services. Minorities often live in over-crowded housing conditions, making physical distancing and self-isolation more challenging. Limited digital access and parental education gaps may also make home-schooling more difficult.
- Persons belonging to minorities may be more likely to be excluded from health care because they lack resources or official documentation, or because of stigma or discrimination. States should ensure access for minorities to health care, including for those without health insurance or identification paper.

International Sanctions

- The international community should advocate for the lifting, or at least suspension, of all sanctions that hamper the ability to effectively fight the COVID-19 pandemic.
- Governments applying sanctions are urged to immediately review and withdraw measures that may impede countries' efforts to response to the COVID-19 pandemic, including those which prevent the purchase or shipment of medicine, medical equipment, or other essential goods, or impede financing for the purchase of medicine, medical equipment, or other essential goods.

QUARANTINE AND EPIDEMIC LAW ENFORCEMENT IN INDIA

The IPC was a visionary Code as such a law was not in existence in England at that time. One of the most pivotal segments of containment of public nuisance is the quarantine provision of IPC. Section 188, 269, 270, and 271 of IPC and Section 133 CrPC, assumes pivotal significance in the present scenario of the COVID-19 pandemic and lock-down orders.

The relevant provision relating to a negligent act likely to spread infection of disease dangerous to life is Section 269 of the IPC: "Whoever unlawfully or negligently does any act knowingly to spread the infection of any disease dangerous to life shall be punished with imprisonment of six months and fine or both." Section 270 further provides that any malignant act likely to spread infection of disease dangerous to life shall be punished for the imprisonment of two years. Section 271 also provides that disobedience of quarantine rule is subject to six months imprisonment or a fine.

On March 11, the Cabinet Secretary of India enforced Section 2 of the Epidemic Diseases Act in all states and union territories in India to control COVID-19. It empowers the state government to take special measures and prescribe regulations as to dangerous epidemic diseases. The Act confers power to the Central Government to take measures and prescribe regulations for the inspection of any ship and detention of a person intending to sail and arrive at any port. Section 3 of the Act prescribes imprisonment of 6 months or a fine, or both (similar to the IPC).

The officers acting in good faith to implement the law are protected from any suit or other legal proceeding under Section 4.

This colonial law was historically applied in India to control cholera in Gujarat, malaria in Chandigarh, dengue fever in Delhi and swine flu in Pune. The application of the vintage law for containment of COVID-19 pandemic and control of the spread of the infectious disease is an interesting modern application.

THE ENFORCEMENT OF QUARANTINE LAW AND LOCK DOWN

As per IPC- Indian Penal Code, deals with offenses affecting the public health safety convenience, decency, and morals, which can be split into two major parts: one dealing with the public nuisance and the other dealing with the quarantine rule. The IPC law is further supplemented called by the Epidemic Diseases Act-1897. This law of 1897 was first enacted to tackle the outbreak of the bubonic plague in Mumbai in former British India and is frequently applied to the containment of epidemics like malaria, dengue fever, and swine flu.

The enforcement of quarantine law and clamping of a nation-wide lock-down has been in first phase March 23 to 14 April and Second Phase extended from April 14 to May 3, 2020 with Government advisory note. The concept of quarantine provides for social distancing to contain the spread of the virus and undertake measures to ensure the maintenance of essential services and supplies. The current situation in India amid COVID-19 derives from the Sections 6(2)(1) and 10(2)(1) of the DMA- Disaster Management Act for the quarantine law enforcement and protection of health.

SOCIAL IMPACT OF COVID- 19

The State has a paramount duty for nutrition security, the standard of living, and improvement of public health under Article 47 of the Constitution of India. The Supreme Court in Municipal Council Ratlam V. Vardichand ruled that in the exercise of such power, the judiciary must be informed by the broader principle of access to justice. The Court relied on egalitarian values from Article 38 of the Constitution. Nevertheless, the courts have the right to intervene on the ground of reasonableness and procedural preparedness before enforcement by the State. This question was raised in Alakh Alok Srivastava v. Union of India, by way of public interest litigation. The writ highlighted the plight of thousands of migrant laborers who, along with their families, were walking hundreds of kilometers from their workplace to their villages and towns in defiance of COVID-19 lock-down order. The jobless and migrant workers stranded without any means of transportation are nothing short of forced detainees in the midland. The police actions under Section 188 of the IPC are justifiable but resulted in abuses against people in need. The sealing of state borders has caused disrupted freedom of movement and halted the supply of essential goods.

REMEDIES UNDER THE COMMON LAW

The quarantine law and its compliance by people and the state alike can hardly be contested. Courts have always tilted towards the State's power to enforce. In public health practice, "quarantine" refers to the separation of persons (or communities) who have been exposed to an infectious disease. "Isolation," in contrast, applies to the separation of persons who are known to be infected. The relevance of the common law remedy in this context is a unique inquiry in contemporary parlance from the perspective of health care services, access to medicines, and therapeutic perception of medical delivery. The provision of a public nuisance under Section 268 of the IPC envisages that a person is guilty of a public nuisance when he does an act which causes any common injury, obstruction, danger, or annoyance to the public. The punishment for public nuisance under Section 290 of the IPC is a fine of ₹200 (INR). It is important to note that ₹200 (INR) was exorbitant when the IPC was adopted one-hundred-sixty years ago. The continuance of public nuisance after the injunction is a case of continuing and subsisting nuisance. Under Section 291 of the IPC, this kind of nuisance is punishable with six months imprisonment, a fine or both.

The application of the IPC is eased by Section 133 of Criminal Procedure Code (CrPC).
The Supreme Court of India, in Municipal Council Ratlam v. Vardichand, has given a teleological interpretation in the context of the public health safety, convenience, decency, and morals, logically linking Sections 188 and 268 of IPC with Section 133 of CrPC. According to the Court, such a proposition is justified under Section 188 of the IPC.

Besides these substantive provisions, the procedural rigors of Section 133 [CrPC] is more categorical, although it reads discretionary. The judicial discretion, when facts for its existence are present, has a mandatory import. The imperative tone of -133 CrCP read with the punitive temper of Section 188 IPC makes the prohibitory act an obligatory duty.

The judgment illustrates the transformation of seemingly dull legislation into a robust mandate to protect citizens from epidemics and pandemics alike. It maintains that "decency and dignity are . . . non-negotiable facets of human rights and are the first charge on local self-governing bodies." It is quite unfortunate to note that despite its vast potential, the judgment remains underutilized. The penultimate analysis of colonial law and its teleological interpretation seems highly relevant in the wake of the current lock-down scenario.

INCLUSIVE PUBLIC HEALTHCARE LAW TO COMBAT PANDEMIC IN INDIA

The health degree of a society's well-being is determined by the ideas which take actual shape in the course of its daily self-constitution. In order to reform and even redeem such a society, we have to reform those defining ideas. The quality of our human life is a function of our determining ideas. Law plays a significant and structural role which is also responsible for the creation of an infinitely complex network of legal relations connecting every single individual of a society. Our individual and social behavior derives its genesis from the law, which is responsible for the development of social reality. In the present situation, COVID-19 is our reality. It is an eye-opener for all of us, as a community, as citizens and even as a nation.

In his book 'Health Care Law,' J. Montgomery articulated the notion of the right to health by providing two possible conceptions of health: 'The Social Model' and 'The Engineering Model'. The Latter model emphasizes repairing a defective human machine. This model is not immune to challenges because one cannot ascertain the optimum level of health and identify when a particular human-machine becomes defective. This judgment is inherently subjective and medical professionals are accountable for its determination. The former model, on the other side, has a broader amplitude. International legal instrument (as declared in the Declaration of Alma Ata) is a wider approach that recognizes health as a state of complete mental, physical and social well-being and not merely absence of any infirmity or disease. This approach also identifies health as a fundamental right and that the fulfillment of the highest level of health is important from a global perspective, whose comprehension demands actions of several socio-economic sectors along with healthcare as one. On the contrary, India's healthcare law might appear quite archaic.

A COLONIAL LAW VERSUS A NOVEL VIRUS

During the late 19th century, British-India was struck by the scourge of bubonic plague (also known as Bombay Plague Epidemic. The bubonic plague was responsible for the loss of thousands of human lives. From Mandvi of Bombay (presently Mumbai), the plague gradually engulfed a massive human population within short span of time. In order to combat such an epidemic, the Epidemic Diseases Act was enacted in 1897. Thereafter, India has encountered

several outbreaks of infectious diseases since independence. Cholera O139, Chikungunya, H5N1 Influenza, H1N1 Influenza, Nipah outbreak, Japanese Encephalitis, and Crimean-Congo Hemorrhagic fever have emerged and even re-emerged in the recent past. The said law has been repeatedly used by states. The Act of 1897 empowers the state as well as central government to take special measures and prescribe relevant regulations as regards an epidemic disease. Section 2 of the legislation confers a discretionary power upon the state government to adopt temporary regulations to be observed by the public or by any person/class of persons as it shall deem necessary to prevent the outbreak of such epidemic. The central government's power was however inserted by an amendment in 1920. According to section 2A of the act, the central government, concerned that any part or the entire country is threatened with an outbreak of an epidemic, may take measures and prescribe regulations. As per section 3 of the Act, anyone who violates the act shall be deemed to have committed an offense punishable under section 188 of the Indian Penal Code.

The VII Schedule of the Constitution of India enlists Public Health under State List. Therefore, a lot of discretion is with the state government to adopt, enact, and enforce public health related regulations. Conversely, the state governments are not always financially equipped to take effective measures. Ensuring essential commodities during the time of epidemic is yet another crucial challenge. In spite of these provisions, India's existing laws fall short of meeting the challenges of a pandemic. With the dynamic and progressive era of globalization, it needs to update its public health law. For example, the modern-day challenges of international air travel, intra-state movement of migrant workers, escalation of population density of urban areas, changing pattern of food habits, use of social media, public distribution system and even climate change contribute to pandemics. Never, in the history of Independent India, has the entire country witnessed such a lockdown. Although the Epidemic Diseases Act appears quite regulatory in nature, it does not address the multi-faceted dimensions of public health issues of India.

ALLIED INDIAN LEGISLATIONS VIS-À-VIS PUBLIC HEALTH

India has certain public health enactments with an objective to prevent and control epidemic diseases. For example, The Live-Stock Importation Act primarily regulates the importation of livestock and livestock products which is likely to be affected by infectious and contagious

disorders. The same legislation also empowers the state government (Section 4) to make rules for the detention, inspection, disinfection, or destruction of imported livestock. The Indian Ports Act under Section 6 empowers the government to make rules for the prevention of danger arising to the public health by the introduction and the spread of any infectious or contagious disease from vessels arriving at, or being in, any such port, and for the prevention of the conveyance of infection or contagion by means of any vessel sailing from any such port. The Drugs and Cosmetics Act under section 26 B empowers the Central Government to regulate, restrict, or manufacture drugs in the public's interest:

If the Central Government is satisfied that a drug is essential to meet the requirements of an emergency arising due to epidemic or natural calamities and that in the public interest, it is necessary or expedient so to do, then, that Government may, by notification in the Official Gazette, regulate or restrict the manufacture, sale or distribution of such drug.

The Ministry of Health & Family Safety of the Government of India launched an Integrated Disease Surveillance Project (IDSP) in 2004 for a period until 2010. The project was further restructured and extended. As per the project, A Central Surveillance Unit was established in Delhi along with respective State Surveillance Units and District Surveillance Units in all states and districts of the country. The prime objective of IDSP was to strengthen and maintain a decentralized laboratory-based IT enabled disease surveillance system for epidemic prone diseases to monitor disease trends and to detect and respond to outbreaks in early rising phases through a trained Rapid Response Team. The beauty of IDSP lies in its capacity building, data management and surveillance system with application of Information and Communication Technology. Albeit, these enactments are taking public health issues in consideration but our existing situation demands integration and convergence of all the relevant sectors under one legislative roof.

STATE-LEVEL REGULATIONS IN REGARDS TO EPIDEMICS & COVID-2019

India has enacted quite a few state legislations for public health. For example, section 81 of The Madras Public Health Act empowers the government to make such rules as they deem fit for the treatment of persons affected with any epidemic and for preventing the spread of the same.

It has even a clause on such infectious diseases that are transmissible through animals (Section 61). Section 86 of The Cochin Public Health Act empowers the government to make rules as they deem fit for the treatment of persons affected with any epidemic, endemic or even infectious disease. The Goa, Daman and Diu Public Health Act was also enacted along similar lines (Section 75).

However, with respect to COVID-19, the Indian states have adopted regulations in furtherance to Epidemic Diseases Act which are quite similar to each other. For example, The West Bengal Epidemic Disease COVID 19 Regulations mandates all government and private hospitals to have influenza-like illness and flu corners for the screening of suspected COVID-19 cases. The imposition of social distancing has been directed under the 2020 regulation. Certain geographical areas may be declared as containment zones by barring any entry and exit of people or vehicles. Similarly, under Maharashtra Regulations for Prevention and Containment of Corona virus Disease, the State Integrated Disease Surveillance Unit (under IDSP) and District Collectors have been entrusted with certain duties and obligations to combat COVID-19. Even the Municipal Commissioner is competent to implement containment measures in Maharashtra. Delhi Corona virus Regulations also empowers the surveillance personnel to enter any such premises to trace and detect COVID-19. Such entry by the surveillance personnel has been declared lawful under the regulation. The Indian government has also taken recourse to Disaster Management Act by declaring COVID-19 as a notified disaster.

From a pharmaceutical angle, India imports almost 80% of its raw materials from China. India has recently developed an indigenous testing kit for COVID-19. Previously it was heavily dependent upon imported testing kits. Therefore, we need to consider all these gaps while reforming the healthcare laws. In fact, international legal instruments should also take into account while adopting a comprehensive health law. In absence of a law, it is now with the governments to determine and adopt innovative measures to eliminate this pandemic. The rights of the medical professionals and healthcare personnel, promotion of investments in healthcare sector as well as medical research, the establishment of an emergency fund for pandemic crises, restrictions in travel and movement during pandemic emergency, adoption of a health information system, regulation of animal markets/trade, and alignment of fundamental rights of pandemic law are some core areas that needs immediate attention. In order to regulate the avenues of social distancing, mandatory isolation and quarantine, inclusive public health

laws should also consider the thresholds as enshrined under Article 19 and Article 21 of The Constitution of India.

CONCLUSION

All of the aforesaid legislation, regulations, and initiatives are relevant in the current context, but they fail to address the ethical issue of equitable access to public healthcare. In this context, The National Health Bill of 2009 was quite progressive as it touched upon the human rights dimension of public healthcare. The bill defined epidemic as an "occurrence of cases of disease in excess of what is usually expected for a given period of time, and also includes any reference to disease outbreak." Section 5 of the bill imposed certain obligations upon the governments to ensure comparable priority towards a right to quality health care services and the well-being of all as well as to take effective measures to prevent, treat, and control epidemics and endemic diseases. In a way, it was a very dynamic bill but unfortunately never saw the light of the day. India should consider revisiting certain aspects of the bill.

Lawrence Gostin once conceptualized public health law as, "at its core, the authority and responsibility of government to ensure the conditions for the population's health" but it is also an individual and communitarian responsibility when there is a pandemic. Public health is related to the element of population-based services which are based on public health methodologies. Health authorities have the power to coerce individuals and businesses for community protection. It addresses a relationship between the population and state because the latter has not only power but also a duty to protect the health of the population. Once India manages to flatten the growth curve of COVID-19, it should consider refurbishing its public health law by not only reaffirming Montgomery's 'Social Model' but also by adopting an overarching public health law with pandemic as one of its elements. We as humans should also refurbish our ways of life by aspiring for a better future by contributing to the pivotal process of self-creating and self-imagining.

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